

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

DAMON A. WRIGHT, #1164228

§

VS.

§

CIVIL ACTION NO. 6:08cv313

DIRECTOR, TDCJ-CID

§

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed as time-barred. The Petitioner has filed objections.

The Report and Recommendation of the Magistrate Judge, which contain his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct.

In his objections, the Petitioner argued that his petition should be considered on the merits since he was innocent of the crime and because the grand jury failed to timely indict him. The Fifth Circuit has held, however, that the deadline for filing a petition for a writ of habeas corpus is not tolled by claims of actual innocence. *Cousin v. Lensing*, 310 F.3d 843, 849 (5th Cir. 2002). Furthermore, a complaint about the Grand Jury failing to timely indict him is the type of issue that can be and must be brought before the expiration of the one year statute of limitations. The

Petitioner has not shown that his petition should not be dismissed as time-barred. Thus the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. All motions not previously ruled on are hereby **DENIED**.

**So ORDERED and SIGNED this 24th day of September, 2008.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS**  
**UNITED STATES DISTRICT JUDGE**